

## **MEETING RECORD**

**NAME OF GROUP:** PLANNING COMMISSION

**DATE, TIME AND PLACE OF MEETING:** Wednesday, April 27, 2005, 1:00 p.m., City Council Chambers, First Floor, County-City Building, 555 S. 10th Street, Lincoln, Nebraska

**MEMBERS IN ATTENDANCE:** Jon Carlson, Gene Carroll, Roger Larson, Gerry Krieser, Dan Marvin, Melinda Pearson, Mary Bills-Strand, Lynn Sunderman and Tommy Taylor; Marvin Krout, Ray Hill, Mike DeKalb, Brian Will, Becky Horner, Duncan Ross, Greg Czaplewski, Jean Walker and Teresa McKinstry of the Planning Department; media and other interested citizens.

**STATED PURPOSE OF MEETING:** Regular Planning Commission Meeting

Chair Mary Bills-Strand called the meeting to order and requested a motion approving the minutes for the regular meeting held March 30, 2005. Motion for approval made by Taylor, seconded by Krieser and carried 9-0: Carlson, Carroll, Krieser, Larson, Marvin, Pearson, Bills-Strand, Sunderman and Taylor voting 'yes'.

Bills-Strand then requested a motion approving the minutes of the regular meeting held April 13, 2005. Motion for approval made by Carroll, seconded by Krieser and carried 9-0: Carlson, Carroll, Krieser, Larson, Marvin, Pearson, Bills-Strand, Sunderman and Taylor voting 'yes'.

### **CONSENT AGENDA** **PUBLIC HEARING & ADMINISTRATIVE ACTION** **BEFORE PLANNING COMMISSION:**

April 27, 2005

Members present: Carlson, Carroll, Krieser, Larson, Marvin, Pearson, Bills-Strand, Sunderman and Taylor.

The Consent Agenda consisted of the following items: **COUNTY CHANGE OF ZONE NO. 05027; COUNTY FINAL PLAT NO. 05023, PRAIRIE LAKE ESTATES 1<sup>ST</sup> ADDITION; COUNTY FINAL PLAT NO. 05027, WHITETAIL RUN ADDITION; COUNTY FINAL PLAT NO. 05030, NORTH BRANCHED OAK ESTATES; ANNEXATION NO. 05010; and CHANGE OF ZONE NO. 05029.**

Ex Parte Communications: None.

**Item No. 1.4, County Final Plat No. 05030, North Branched Oak Estates**, was removed from the Consent Agenda and scheduled for separate public hearing.

Carroll moved to approve the remaining Consent Agenda, seconded by Marvin and carried 9-0: Carlson, Carroll, Krieser, Larson, Marvin, Pearson, Bills-Strand, Sunderman and Taylor voting 'yes'.

**COUNTY FINAL PLAT NO. 05030,**  
**NORTH BRANCHED OAK ESTATES,**  
**ON PROPERTY GENERALLY LOCATED**  
**AT N.W. 84<sup>TH</sup> STREET AND**  
**WEST ROCK CREEK ROAD.**  
**PUBLIC HEARING BEFORE PLANNING COMMISSION:**

April 27, 2005

Members present: Carroll, Pearson, Marvin, Krieser, Sunderman, Carlson, Taylor, Larson and Bills-Strand.

Staff recommendation: Conditional approval.

Ex Parte Communications: None.

This application was removed from the consent agenda due to receipt of additional information.

Mike DeKalb of Planning staff submitted a letter from the Game and Parks Commission mentioning the 600' setback from public property requirement that is in the state statutes, noting that this proposal is 1,700 feet away and meets the requirement. The letter also advises that there is an existing blue rock shooting range at the north end of the lake.

DeKalb also submitted a letter from Mary Schweitzer with concerns about the water, rural acreages clumped together, noise, traffic, maintenance, drainage, density, septic tanks, lagoons and the invitation for more acreages in the area.

Proponents

**1. Brian Carstens** appeared on behalf of **Aspen Builders**. This is a final plat for the first phase of the community unit plan approved six months ago. Carstens believes that the only issue to address is the water. There is really good water on the three lots being final platted today. Test wells were done higher up on the hill and the water is not as plentiful, but there is good water in the lower spot. There is a well easement area and the Health Department was satisfied at the time of the community unit plan approval. This is an AG community unit plan.

There was no testimony in opposition.

**ACTION BY PLANNING COMMISSION:**

April 27, 2005

Larson moved to approve the staff recommendation of conditional approval, seconded by Krieser and carried 9-0: Carroll, Pearson, Marvin, Krieser, Sunderman, Carlson, Taylor, Larson and Bills-Strand voting 'yes'. This is a recommendation to the Lancaster County Board.

**COMPREHENSIVE PLAN AMENDMENT NO. 05013;**  
**ANNEXATION NO. 05009;**  
**CHANGE OF ZONE NO. 04081,**  
**FROM I-3 EMPLOYMENT CENTER TO R-3 RESIDENTIAL**  
**AND FROM AG AGRICULTURAL TO I-3 EMPLOYMENT CENTER;**  
**SPECIAL PERMIT NO. 04067,**  
**STONE BRIDGE CREEK-THE VILLAS COMMUNITY UNIT PLAN;**  
**and**  
**USE PERMIT NO. 139A,**  
**ON PROPERTY GENERALLY LOCATED**  
**AT HUMPHREY AVENUE AND REDSTONE ROAD.**  
**PUBLIC HEARING BEFORE PLANNING COMMISSION:**

April 27, 2005

Members present: Carroll, Pearson, Marvin, Krieser, Sunderman, Carlson, Taylor, Larson and Bills-Strand.

Staff recommendation: Approval of the Comprehensive Plan Amendment and Change of Zone; approval of the Annexation, subject to an annexation agreement; and conditional approval of the community unit plan and amendment to the use permit.

Ex Parte Communications: None.

The Clerk announced that the applicant has submitted a written request for a two-week deferral.

Taylor moved to defer, with continued public hearing and action scheduled for May 11, 2005, seconded by Marvin and carried 9-0: Carroll, Pearson, Marvin, Krieser, Sunderman, Carlson, Taylor, Larson and Bills-Strand voting 'yes'.

There was no public testimony.

**COMPREHENSIVE PLAN CONFORMANCE NO. 05002,**  
**A PROPOSED AMENDMENT TO THE NORTH 27<sup>TH</sup> STREET**  
**CORRIDOR AND ENVIRONS REDEVELOPMENT PLAN;**  
**CHANGE OF ZONE NO. 05028,**  
**FROM I-1 INDUSTRIAL TO B-3 COMMERCIAL;**  
**and**  
**STREET & ALLEY VACATION NO. 05004,**  
**TO VACATE THE NORTH-SOUTH ALLEY BETWEEN**  
**N. 27<sup>TH</sup> STREET AND N. 29<sup>TH</sup> STREET ON THE SOUTH**  
**SIDE OF APPLE STREET.**  
**PUBLIC HEARING BEFORE PLANNING COMMISSION:**

April 27, 2005

Members present: Carroll, Marvin, Krieser, Sunderman, Carlson, Taylor, Larson and Bills-Strand; Pearson declared a conflict of interest.

Staff recommendation: A finding of conformance with the Comprehensive Plan on the amendment to the Redevelopment Plan; approval of the change of zone; and a finding of conformance with the Comprehensive Plan on the street vacation.

Ex Parte Communications: None.

Proponents

1. **Ernie Castillo** of the **Urban Development Department** presented the proposal. The North 27<sup>th</sup> Street Corridor and Environs Redevelopment Plan amendment allows the addition of three city-owned lots along with the alley for redevelopment of the project. The City originally purchased the three lots along with the railroad corridor for the MoPac Trail and the trail corridor will stay as is. The change of zone to B-3 is more appropriate for this project and for the future of the North 27<sup>th</sup> Street Corridor. It also eliminates the I-1 zoning abutting the residential use to the east and across Apple St. to the north. The alley vacation is needed for redevelopment of the site. The developer will purchase part of the vacated alley for their project and the city will retain easement for the existing utilities located in the alley.

The specific project is Heartland Optical, which has been in business for 30 years on North 27<sup>th</sup> Street. It is a successful family-owned small business, expanding their services to include retail eyewear, etc. This is a great project for the neighborhood and for the North 27<sup>th</sup> Street Corridor, and complements the health center across the street.

Carlson stated that he likes the plan, the building and the use. He noted from page 3 of the staff report: "The Concept Plan...identifies a new neighborhood park on vacant property east of the Union Hall." Carlson wondered whether this "changes gears a little bit. Is that

in the mix of the trail? Castillo advised that there is a neighborhood park plan for the east side of 27<sup>th</sup> Street, so that is still intact. These three lots are being added to give more flexibility to the project. The park land is still there.

Duncan Ross of Planning staff added that the language in the staff report attempts to reflect what is in the corridor plan (the actual subarea plan for N. 27<sup>th</sup> Street), which identifies a number of concepts for future redevelopment activities. The concepts are more part of an overall vision goal, and when it comes to redevelopment activities, those concepts are assessed at that time. This project still provides for a small park amenity in conjunction with the future trail and overpass. A more elaborate park is not included with this project.

There was no testimony in opposition.

**COMPREHENSIVE PLAN CONFORMANCE NO. 05002**

**ACTION BY PLANNING COMMISSION:**

April 27, 2005

Carlson moved a finding of conformance with the Comprehensive Plan, seconded by Carroll.

Carlson was concerned about the trail but he is now satisfied.

Motion carried 8-0: Carroll, Marvin, Krieser, Sunderman, Carlson, Taylor, Larson and Bills-Strand voting 'yes'; Pearson declaring a conflict of interest. This is a recommendation to the City Council.

**CHANGE OF ZONE NO. 05028**

**ACTION BY PLANNING COMMISSION:**

April 27, 2005

Marvin moved approval, seconded by Carroll and carried 8-0: Carroll, Marvin, Krieser, Sunderman, Carlson, Taylor, Larson and Bills-Strand voting 'yes'; Pearson declaring a conflict of interest. This is a recommendation to the City Council.

**STREET & ALLEY VACATION NO. 05004**

**ACTION BY PLANNING COMMISSION:**

April 27, 2005

Carroll made a motion for a finding of conformance with the Comprehensive Plan, seconded by Marvin and carried 8-0: Carroll, Marvin, Krieser, Sunderman, Carlson, Taylor, Larson and Bills-Strand voting 'yes'; Pearson declaring a conflict of interest. This is a recommendation to the City Council.

**COMPREHENSIVE PLAN AMENDMENT NO. 04010**

**and**

**CHANGE OF ZONE NO. 05026,**

**APPLE'S WAY PLANNED UNIT DEVELOPMENT,**

**ON PROPERTY GENERALLY LOCATED**

**AT S. 66<sup>TH</sup> STREET AND HIGHWAY 2.**

**CONT'D PUBLIC HEARING BEFORE PLANNING COMMISSION:**

April 27, 2005

Members present: Carroll, Pearson, Marvin, Krieser, Sunderman, Carlson, Taylor, Larson and Bills-Strand.

Staff recommendation: Denial.

Ex Parte Communications: Bills-Strand, Larson, Carroll, Krieser and Pearson disclosed a telephone call from Mark Hunzeker advising that the neighborhood had met but had not provided a written statement.

Brian Will of Planning staff submitted additional information, including a letter from Royce Mueller, President of Country Meadows Homeowners Association, requesting that this proposal be deferred for two weeks; and two letters in opposition.

Dennis Bartels of Public Works & Utilities submitted the recommendations of Public Works & Utilities which were not included in the original staff report.

Proponents

**1. Mark Hunzeker** appeared on behalf of **Apple's Way LLC** and **UNO Properties**, and discussed the traffic issues. Hwy 2 is a principal arterial designated in the Comprehensive Plan as a protected corridor. This proposal adds some traffic to Hwy 2 and may add to the potential need to add lanes on Hwy 2 by 2025. The original traffic report on this site concluded that this proposal should be restricted to 250 dwelling units without a signalized access to Hwy 2. Everybody knows that Hwy 2 is a principal arterial and carries high volumes of traffic. Hunzeker suggested that the Hwy 2 corridor preservation designation in the Comprehensive Plan really means preservation of right-of-way and limitation of new access points along Hwy 2. It doesn't talk about protecting against land uses which provide economic development opportunities. This project is in conformance. This proposal does not seek to vacate right-of-way.

Hunzeker pointed out that Public Works finds that the applicant's traffic impact study does not show volumes on Hwy 2 that are unacceptable in year 2015. Thus, Hunzeker believes that the logical conclusion of all this is that this project does not create unreasonable burdens on Hwy

2. The traffic study assumed no south or east bypass, and we all recognize that in 20 years there is a high likelihood that Hwy 2 is going to need some improvement. Hunzeker submitted that this project represents reasonable land use because it is a parcel sandwiched between commercial on the west, Hwy 2 on the north, and a very nice acreage development to the south. This proposal makes a transition on the commercial at the west end with half-acre residential lots against the Country Meadows subdivision at the east end.

Hunzeker submitted that denial of this project, based on traffic concerns, is disingenuous. Everyone knows that Lincoln has a problem with traffic and street construction funding. We are going to have to find some ways to deal with it. Knowing that, it does not make any sense to deny projects such as this that provide some economic activity on infill sites where we have some capacity already in place. If you take a look at the big picture, there is not anywhere in Lincoln that you can point to that would not have question marks about it in a 20-year time frame. We can't reject projects and stop the economic activity of this city simply because we fear a traffic problem in 20 years. In fact, the traffic study identifies a number of intersection improvements that are necessary on Hwy 2, whether or not this project is developed at all. This developer has agreed to make and pay for those improvements, despite the fact that this project does not cause the need for all those improvements. The Public Works report admits that the traffic volumes from this proposal at 2015 are acceptable.

There are at least two studies in the possession of the city showing that at full build-out in 2025, it will likely be necessary to add additional through-lane capacity to Hwy 2. It is not caused by this project. This is a reasonable compromise for this site.

**2. Tom Huston**, 233 S. 13<sup>th</sup>, Suite 1900, appeared on behalf of **Apple's Way** and **UNO Properties**, and gave a brief history of this site, which has been in question since the Shopko proposal in 1994. Approximately two years ago, members of this Commission told the owners and the neighbors to get together and prepare a land use plan for the entire site and that is what they have tried to do.

Huston submitted exhibits for the record, including a letter of endorsement from Lincoln Trade Center Owners Association dated April 6, 2005, and a letter dated April 12, 2005, from Royce Mueller, President of Country Meadows Homeowners Association. The developer agreed to a two-week deferral two weeks ago and offered to meet with the association. Exhibit 3 is a commitment on which the developer has been working with the neighborhood for the last two months. Some changes were made and provided to the association Board of Directors on April 19, 2005. There are two components - residential and commercial. With regard to the residential component, the owner has committed to:

- ▶ limit to 32 lots with covenants substantially similar to the Country Meadows covenants.

- ▶ retain the existing topography and natural features of the site – retain and enhance the detention ponds; retain all of the existing trees.
- ▶ access to a traffic signal. One of the big issues is how to give them that access. The neighborhood has a concern about exiting this area and going through the neighborhood. The developer made the commitment to push for a restricted access gate at the demarcation to permit west- bound traffic so that the neighbors can have access to the traffic signal to get access to Hwy 2.
- ▶ provide a location and pay up to \$10,000 for an entryway sign for Country Meadows.

With regard to the commercial component, the developer has committed to:

- ▶ develop no more than 235,000 sq. ft., which is less than 14% FAR.
- ▶ prohibit fast food, convenience store, 24-hour operations.
- ▶ common design requirements providing pedestrian friendly commercial development.

The commercial development, utilizing the distance, the hill, the trees, the ponds and the single family homes envisioned, provides a good buffer to the neighborhood.

This commitment was provided to the neighborhood and they sent out a ballot, but Huston did not have the results; however, he has been told that they had a pretty good return.

Huston also submitted Exhibit 4, which is a letter from Royce Mueller asking for a two-week delay. Huston does not see anything to be gained by such a delay and Dr. Mueller could not assure him that the position of the neighborhood would solidify in the next two weeks.

Huston then referred to the conditions of approval in the staff report on the PUD. There are 19 site specific conditions, ten of which Huston believes should be handled during the preliminary plat process. The applicant did not request a waiver of the preliminary plat. The applicant will come back before the Planning Commission with all of the engineering data in a preliminary plat process.

Huston requested amendments to the conditions of approval:

- ▶ Amend Condition #1.1.1 to clarify the 235,000 sq. ft. of commercial space:



~~Show land use nodes in the B-2 designating no more than 50,000 square feet of office commercial floor area between South 63<sup>rd</sup> Street and the R-1, and no more than 185,000 square feet of commercial floor area west of South 63<sup>rd</sup> Street, not exceeding a total of 235,000 square feet overall. Adjustments to allow office floor area to be reallocated and used as commercial floor area west of South 63<sup>rd</sup> Street may be approved administratively. The uses to be designated within the total square footage approved shall not exceed the generation of a maximum of 1200 trips during the p.m. peak periods.~~

- ▶ Amend Condition #1.1.4:

~~Show all required screening, and~~ Add a note that states: "Individual lot landscaping for all office and commercial buildings will be reviewed at the time of building permits. Street trees to be reviewed at time of final plat and assigned by Parks and Recreation."

- ▶ Amend Condition #1.1.11 to clarify the restricted access:

~~Delete the restricted access gate across the private roadway. The restricted access gate across the private roadway and separating the residential district from the commercial district may be replaced with a one-way street, a round-about or other traffic calming device to be approved administratively prior to the issuance of building permits.~~

- ▶ Delete Condition #1.1.10, which requires a stub on the development's interior street, even though it is not a street (it is a private road), to provide future connection to S. 56<sup>th</sup>.
- ▶ Add Condition #1.1.20 to prohibit uses of fast food and 24-hour operations:

Add a note that provides "No fast food restaurants with drive-through access or 24-hour operation uses shall be permitted in the B-2 zoning district of this planned unit development.

- ▶ Add Condition #1.1.21 to clarify the contributions which were addressed in Mr. Hunzeker's testimony:

Add a note that provides: "The Developer shall:

- a. At its cost and expense, install the improvements at its entrance on 63<sup>rd</sup> Street, including:
  - Traffic signal
  - 400' right turn lane for eastbound traffic
  - 200' left turn lane for westbound traffic
  - Removal of median break for existing house
  - Reconstruct existing median break.
- b. At its cost and expense, install the improvements at 66<sup>th</sup> Street and Highway 2, including:
  - 150' right turn deceleration lane for eastbound traffic.
- c. Contribute the sum of \$425,000 to the City of Lincoln to pay for the off-site improvements recommended in the Traffic Impact Study prepared by Olsson Associates dated March 2005.

Marvin asked for an explanation of the reference to p.m. peak periods in Condition #1.1.1. Huston explained that the total number of trips in a report is irrelevant. The traffic engineer focuses upon the a.m. peak period and the p.m. peak period. They looked at the anticipated commercial uses and tried to cap those commercial uses with the amendment to Condition #1.1.1. It was a balancing act.

Pearson asked for clarification of the amendment to Condition #1.1.10. Huston explained that the proposal shows public right-of-way the appropriate distance off of Hwy 2 and then turns into private road. Staff is requiring that they move the detention cell and show a stub street at the southwest corner that eventually could be connected over to S. 66<sup>th</sup> St. The site plan shows a connection with the Trade Center. The staff is requesting the stub in addition to the connection to the Trade Center. It is a problem from a design perspective in that they cannot achieve all of the objectives simultaneously by showing that stub street. The proposal is attempting to show a pedestrian friendly interior, and that is inconsistent with showing through traffic from Hwy 2 to S. 66<sup>th</sup>. He believes the stub street would present problems down the road.

Carlson inquired as to how long the developers have owned the property. Huston believes that it has been under contract for two years and they have held title for approximately one year and nine months.

### Opposition

1. **Gene Schwenke**, 6061 Frontier Road, on the north side of Hwy 2, with access off Old Cheney Road on Frontier Road, testified in opposition. He has lived on this acreage for 33 years. When he moved there in 1972, it was a two-lane road and there was a fair amount of

traffic. Through the years, he lost approximately 10 feet of his property on the back portion of his lot to the highway. He also had an access road that was more or less a driveway and he had to sign a statement that he would no longer use it. He lives in Sheldon Heights consisting of acreages from 2 to 10 acres. He is not against housing or a acreage development in this area, but he is definitely against any more commercialization in this area. The traffic has doubled, tripled and quadrupled. Sheldon Heights did not benefit much by being annexed. He believes they pay more taxes and get less services. He agrees with the residential component, but more commercial is not acceptable. There is a Home Depot, Menards, Wal-Mart, and Tractor Supply within 3-5 miles of his home. He agrees that the City Council had said there would be no more development from 56<sup>th</sup> to 84<sup>th</sup>. He does not know where that stands.

Mr. Schwenke stated that he has personally talked to Royce Mueller and the Country Meadows association has not made a decision. There are things they still want to work out with the developer. Schwenke believes this development is wrong until further studies are done.

**2. Christine Kiewra**, 6400 S. 66<sup>th</sup>, testified in support of the staff recommendation of denial. At the time that Home Depot was approved at 70<sup>th</sup> and Hwy 2 and 84<sup>th</sup> and Hwy 2, people became concerned about the Capitol View Corridor and entryway to the city. Then Mayor Don Wesely and the City Council assured the home owners that Home Depot is the last of commercial to be approved along this corridor. The subarea plan was developed; this applicant requested additional commercial; and it was denied. She believes this applicant has owned a portion of the property for several years and acquired this portion more recently. At the time the subarea plan was brought forward, Greg Schwinn was on the Commission and his response was that "this guy has got to stop putting a square peg in a round hole".

Kiewra agreed that the developer has been working with the homeowners but they are still putting a big box of commercial development in this area. Many homeowners, individually and with their associations, worked for that subarea plan. The residential portion of this development is appealing and she does not believe the neighbors are opposed to that part.

She noted that not very many of the homeowners are here today, but she believes the homeowners have a difficult time staying on top of these projects. In addition, she does not believe the Pine Lake, Southfork, Family Acres, Lee's Summit, and other neighborhoods in the area were contacted by the developers. Kiewra advised that Country Meadows is hiring an attorney to help them through further discussions. They are also meeting with the Planning Director next week and would prefer a two-week delay.

**3. Randy Hoskins, City Traffic Engineer**, testified that the traffic impact study prepared for this development proposes uses that would create about 11,500 trips for this site. The existing Comprehensive Plan designation would generate 9,200 trips a day. If you add the

11,500 trips to the approximately 14,000 trips already there on Hwy 2, that would put over 25,000 trips a day on that road, which is pretty much the capacity for a four-lane road. When the model is run for the city, they look at the land uses shown in the Comprehensive Plan in a 25-year scenario. The LRTP (Long Range Transportation Plan), which is part of the Comprehensive Plan, is based on those numbers. The last run of the LRTP model found that we needed the full capacity of Hwy 2 in order to be able to handle the growth that we expect will be occurring in this area in the next 25 years. That was assuming 2500 trips per day from this site, not 11,500. If we are looking at adding 9,000 trips a day, he suggested taking another look at the Comprehensive Plan and assume six lanes between 56<sup>th</sup> and 84<sup>th</sup> in order to handle the future traffic.

In the past, efforts have been made to maintain Hwy 2 as a four-lane roadway. For example, the Appian Way development had a trip cap; there have been several other locations that have worked to upgrade their zoning to commercial or office and were not approved. The Commission needs to keep in mind the long term impacts of adding significant additional commercial at this site. It sounds like they are asking for a 1200 trip p.m. peak hour maximum. The traffic study showed only 1,050 p.m. peak trips, so what they are asking for would actually increase the number of trips that they could generate.

**4. Harold Moser**, owner of the property at the northwest corner of 70<sup>th</sup> and Hwy 2, is concerned about additional stop lights and access points on Highway 2, which will literally reduce this so-called expressway to just another downtown street. The problem is not how many more buildings are constructed, but how many more times we are going to stop that traffic as it goes back to Lincoln. We are stopping the traffic too much right now. As you get further out, it takes longer and longer to get to town. We need to find a way to alleviate that. We need to prevent additional commercial development between 70<sup>th</sup> and 56<sup>th</sup>.

\*\*\* Five-minute break for technical difficulties with the sound system \*\*\*

Upon reconvening, Chair Bills-Strand confirmed that there were no ex parte communications during the break.

**5. Kathleen Batterman**, 6901 Almira Lane, testified in opposition, with concerns about the neighbors having to appear on a regular basis to remind everyone of agreements that have been in place in this neighborhood and the city. The neighborhoods worked to develop a Comprehensive Plan that everyone has agreed upon. The Planning Commission's first review might be to compare the development to the Comprehensive Plan and when it is inconsistent, they should encourage the developer to look elsewhere. The developer should be told up-front that their proposal is unlikely. Please deny this application.

**6. Beverly Moser**, property owner at the northwest corner of 70<sup>th</sup> and Hwy 2, testified in opposition and reminded the Commission of the agreement that this area would be AGR.

This agreement gets eroded constantly. Home Depot is an eyesore along with the additional traffic that it brings. She is not opposed to additional residential development. The idea of any further commercial development seems to go against the neighborhood that she and her husband joined and have participated in for many years.

**7. Vil Rizijs**, 6801 Almira Lane, testified in opposition. He does not know of anyone in his neighborhood that is in favor of the commercial zoning. They all took a hit on their property values with Home Depot, and now they are being asked to take another hit. He believes that the logical expansion of that area should be residential. In terms of traffic flow, it is a very difficult to get across 66<sup>th</sup> and Hwy 2 now. They have been cut off on Almira Lane at 70<sup>th</sup> and cannot go north, so they have to use 66<sup>th</sup> Street. This will be even more difficult if more traffic is added to 66<sup>th</sup> Street. Please deny the commercial zoning.

#### Staff questions

Jon Carlson asked if this area was ever designated for commercial use in the Comprehensive Plan. Brian Will of Planning staff did not recall that it was. The most recent history is as stated in the report. It has always been shown as residential, and most recently in the subarea plan, a small area was designated special residential to allow for some kind of transition from the residential on this site to the Trade Center to the east, such as potentially day care or some use slightly more intensive than residential but not limited specifically to residential. There have been several applications to change to commercial; several others in the discussion phase; and several have been brought forward to the Planning Commission. He did not have a specific number, but agreed that this is a discussion that the property owners have had several times over the last 10 years.

Based on 62 acres, Pearson inquired as to the maximum number of residential dwelling units that would be allowed on this parcel. Will indicated that it would depend on the density. The original traffic report done by Schemmer looked at this site as single family development of approximately 250 units (approximately four units per acre). That density showed that a traffic signal would not be required and staff has supported this all along.

Pearson does not quite understand the concern about traffic at this intersection when we just put in the big boxes down the street—Menards, Wal-Mart, Home Depot, and a couple of high rise hotels. Aren't we worried about the traffic generation upstream of Hwy 2? Why are we more concerned about the traffic at this intersection than we are further east? Will explained that those land use decisions were made and are now part of the subarea plan and Comprehensive Plan. The subarea plan also shows this site as residential. Staff is taking the position that this should be maintained and that we can live with the traffic network in the area.

Bills-Strand inquired whether access would be allowed onto Hwy 2 if this land was going to be developed 100% residential, or would they have to go through Country Meadows and either out 66<sup>th</sup> or the back road on Pine Lake? Dennis Bartels of Public Works explained that there is an outlot left with the original plat of Country Meadows which was intended to be a

street connection back to 66<sup>th</sup> Street. There are some existing breaks in the controlled access along Hwy 2 that don't have the median openings or the signal.

Potentially they would have access onto Hwy 2. If it was residential, he senses there might be a right-in right-out along Hwy 2 between 66<sup>th</sup> and Old Cheney Road. If we were to limit to no signal it would be better not to have the median opening.

#### Response by the Applicant

Hunzeker urged that the Commission should be considering the potential for this site. If it were developed pursuant to the subarea plan, maybe it shouldn't even have a median break on Hwy 2 and go back through Country Meadows. He assured that no one in Country Meadows wants that to happen. They do not want a street put through that outlot. This developer has let the neighborhood know that they want access to Hwy 2 and any access to Country Meadows would be at 66<sup>th</sup> with a traffic signal on Hwy 2. Four dwelling units per acre plus the "special residential" including multi-family would make that site less and less compatible with the existing residential in Country Meadows. This developer has tried to make a transition using large lots at the east end abutting the outlot in Country Meadows and using the terrain and the trees to screen the commercial and keep it at the west end.

Hunzeker observed that there is a stop light every ½ mile on Hwy 2 from 91<sup>st</sup> Street all the way to Van Dorn, except this stretch of Hwy 2 at 66<sup>th</sup> Street. This is the only place you do not have the access to Hwy 2. Having a stop light here will be beneficial to everyone.

Hunzeker also took issue with the Traffic Engineer's calculation of 11,500 trips per day. If the 235,000 sq. ft. of commercial generates 11,500 trips per day, and you just add that onto the existing count of 14,000 on Hwy 2, the math doesn't work because with what is already approved, existing and to-be-built on Hwy 2, there is something like 3.2 million sq. ft. between 56<sup>th</sup> and Hwy 2 and 91<sup>st</sup> and Hwy 2. If you run those numbers, it adds up to about 49 trips per 1,000 sq. ft. per day, implying a total volume of 156,800 cars on Hwy 2. That is not playing fair with the numbers in his opinion. That is why traffic engineers focus on the intersection functions in traffic studies as opposed to trips per day.

Marvin noted the maximum p.m. trips of 1200 in Condition #1.1.1. Is it fair to assume that you do not mention the a.m. peak hour because you will have minimal impact? Hunzeker stated that the a.m. peak hour trips are lower. You use the higher of the two. Hunzeker did acknowledge that the developer would be willing to discuss the 1200 trips with staff.

#### **COMPREHENSIVE PLAN AMENDMENT NO. 04010**

#### **ACTION BY PLANNING COMMISSION:**

April 27, 2005

Taylor moved denial, seconded by Carlson.

Carlson commented that he has been on the Commission since 1999, and he has seen this application come back again and again and again, and like Greg Schwinn, he agrees that it is "trying to put a square peg in a round hole". This position has been supported by the Planning Commission, City Council and Planning Department for 12 years. He is not sure about the dynamic of coming back and asking for the same thing over and over again. He knows it is important to stick with the strong planning principle and he does not understand why the applicant continues to come back. He believes we need to be consistent. We have to be able to say no and have a good reason to say no.

Marvin commented that in this case, they are creating a buffer and access points that move traffic away from Country Meadows. He believes the developer is being sensitive to the spirit of traffic counts on Hwy 2.

Pearson stated that this is very difficult and complex, particularly when the Commission did not hear from the neighborhood Board of Directors. She understood they took a vote, got the results and are not presenting those votes, so she is curious what the neighborhood really feels like. Good planning principles are very difficult to determine when you are on one side of the fence being a developer and on the other side when you are a neighbor. Given the fact that this parcel is adjacent to an industrial trade center, on a major arterial through the community, and bounded by large commercial development on one end (Menards, Wal-Mart), she believes this is about as sensitive as we're going to get and she will not support denial.

Larson observed that the community has told various developers over the years, officially and unofficially, that we do not want commercial development there. The Home Depot was okayed and that further implied there would not be any other commercial development there, so he will support the denial. He hates to turn away a potential development, but it is in the wrong place.

Carroll stated that he will support denial. It is putting a large square into a small hole. Traffic is the biggest concern. It would be a better site for all residential and that is the way the plan has been designed. This is asking for too much on this small 67 acres.

Bills-Strand believes this is a good buffer. It buffers the Trade Center area; it is giving access. Nothing is worse than the traffic around the Trade Center with the existing accesses; this might actually help that traffic situation. She will not support denial.

Taylor is going to support denial because when Home Depot and Wal-Mart were approved, it was with the idea that we did not want to turn this into a strip mall. We wanted that corridor entry to Lincoln from the east/south and southeast to be very attractive and we want to keep it that way. He is also considering the traffic flow and residential area there. He does not see any reason to change that now. It was with some tough consideration at that time that the Planning Commission made those decisions and we still thought then that it is better for the future of our city to keep that corridor looking as attractive as possible.

Motion to deny failed 4-5: Carroll, Carlson, Taylor and Larson voting 'yes'; Pearson, Marvin, Krieser, Sunderman and Bills-Strand voting 'no'.

Taylor moved to defer for two weeks in order to hear back from the neighborhood as to their vote, seconded by Pearson.

Bills-Strand indicated that she was inclined to vote against deferral since it has been deferred for almost a year and the neighborhoods have had plenty of time to talk and can still talk before it gets on the City Council.

Pearson stated that she will support the deferral. Her initial reaction is no, let's move it on, and the neighbors have been asked to come back over and over, but she thinks we're missing a part of the story and she is not comfortable denying or approving.

Carlson stated that he will support the motion, but it has been recommended residential for 12 years, the commercial has been denied for 12 years, and two weeks is not going to tell him anything more that he needs to know.

Carroll believes that the Country Meadows neighbors are in turmoil and he does not believe they are going to come to agreement in two weeks.

Motion to defer, with continued public hearing and action on May 11, 2005, carried 5-4: Pearson, Marvin, Sunderman, Carlson and Taylor voting 'yes'; Carroll, Krieser, Larson and Bills-Strand voting no.

**CHANGE OF ZONE NO. 05026**

**ACTION BY PLANNING COMMISSION:**

April 27, 2005

Sunderman moved to defer, with continued public hearing and action on May 11, 2005, seconded by Taylor and carried 8-1: Carroll, Pearson, Marvin, Sunderman, Carlson, Taylor, Larson and Bills-Strand voting 'yes'; Krieser voting 'no'.

**COUNTY SPECIAL PERMIT NO. 04055**

**and**

**COUNTY PRELIMINARY PLAT NO. 04025,**

**FOUR STONES,**

**ON PROPERTY GENERALLY LOCATED**

**AT S.W. 29<sup>TH</sup> STREET AND STAGECOACH ROAD.**

**CONT'D PUBLIC HEARING BEFORE PLANNING COMMISSION:**

April 27, 2005

Members present: Carroll, Pearson, Marvin, Krieser, Sunderman, Carlson, Taylor, Larson and Bills-Strand.



Staff recommendation: Conditional approval.

Ex Parte Communications: None.

The Clerk announced that the applicant and staff have requested a four-week deferral. A revised application has been submitted for review.

Carroll moved to defer, with continued public hearing and action scheduled for May 25, 2005, seconded by Carlson and carried 9-0: Carroll, Pearson, Marvin, Krieser, Sunderman, Carlson, Taylor, Larson and Bills-Strand voting 'yes'.

**ANNEXATION NO. 05006;**  
**CHANGE OF ZONE NO. 05024,**  
**FROM AG AGRICULTURAL TO R-3 RESIDENTIAL;**  
**SPECIAL PERMIT NO. 05015,**  
**HARTLAND'S GARDEN VALLEY COMMUNITY UNIT PLAN;**  
**and**  
**STREET & ALLEY VACATION NO. 05002,**  
**ON PROPERTY GENERALLY LOCATED**  
**AT N. 14<sup>TH</sup> STREET AND HUMPHREY AVENUE.**  
**CONT'D PUBLIC HEARING BEFORE PLANNING COMMISSION:**

April 27, 2005

Members present: Carroll, Pearson, Marvin, Krieser, Sunderman, Carlson, Taylor, Larson and Bills-Strand.

Staff recommendation: Conditional approval.

Ex Parte Communications: None.

Becky Horner of Planning staff submitted additional information for the record, including an e-mail in opposition and the Public Works recommendation on the additional waiver of curb and gutter.

Proponents

1. **Brian Carstens** appeared on behalf of **Hartland Homes**, and explained that this is a proposed community unit plan for 324 sf lots located on N. 14<sup>th</sup> Street (with Fletcher to the south, Humphrey is a platted ½ street that is not open, Pennsylvania is a platted street that is not open), surrounded by existing acreages on two sides and undeveloped land to the north, with Stone Bridge Creek to the east.

This project consists of 24 acres of common and green space. An overhead electric line bisects the site diagonally, with existing wetlands and flood corridor easement. There will be a 2.65-acre park as part of the project.

The developer has met with the neighbors on two occasions.

Carstens submitted proposed amendments to the conditions of approval on the community unit plan and the street vacation.

As part of original submittal, staff had requested the additional street because of the block length waiver. The neighbor to the west is opposed to the additional street because of his ideas for future development. Carstens revised the block length waiver request to delete Blocks 4 and 5, and add Block 15. Block 15 is the only block length waiver that the developer is now requesting. The developer is also requesting to add the waiver of pedestrian easement in Block 15 as the neighbor does not want the easement.

The proposed amendments included language to clarify the location of sidewalks:

to complete the installation of sidewalks along both sides of the internal streets and along the south side of Humphrey, north side of Fletcher, west side of N. 14<sup>th</sup> and east side of 7<sup>th</sup> Streets as shown on the final plat within four (4) years following the approval of the final plat.

Carstens requested that Condition #2.1.1.4 be amended with regard to the requirements of the Parks Department:

- (3) A visible and accessible neighborhood park needs to be located ~~at 1.6 acres on Block 8, Lots 1 through 6 on Outlot A, Lots 36 and 37, Block 4, containing a total of approximately 2.85 acres.~~
- (4) All landscaped boulevards and medians shall be maintained by the City of Lincoln ~~developer and or future homeowner's association.~~

With regard to the street vacation, Carstens advised that the developer will be doing a typical exchange as opposed to paying for the right-of-way on 11<sup>th</sup> Street:

- 4. The applicant indicated a willingness to ~~pay for~~ exchange proposed right of way for the vacated right of way.

Carlson asked for an explanation of how pedestrians will walk to the park. Carstens stated that it would basically be all of the street rights-of-way, with sidewalks on both sides. There will be common areas. The creeks are not heavily treed and it is more of a small channel.

There are two culverts but they are not very large so you would be able to cross Humphrey and Pennsylvania.

**2. Peter Katt** appeared on behalf of **Hartland Homes**, stating that Hartland Homes is the builder in Lincoln of affordable housing. The neighbors have some concerns including the smaller lot sizes in this development that will be 42 ft. wide. Katt submitted that as land values and lot prices have increased, in order to still meet the needs of its customers, Hartland Homes has been forced to make some difficult choices and changes in terms of lot sizes and configurations in order to keep housing affordable. There is a mix of lot sizes in this development, but it allows for some of the homes in the neighborhood to continue to be more affordable with the smaller lot size. Lots are priced based upon how much the underlying dirt costs plus the costs to bring improvements, which is generally computed on a front foot basis.

Katt went on to state that this 90 acres was purchased last August at \$47,000/acre. Of that 90 acres, only 70 acres is buildable, making this some of the most expensive dirt per lot in Lincoln, but Hartland Homes had little other choice in terms of availability for a reasonable chance to put lots on the market yet this year. What we see on the map in terms of green space areas is the direct result of the Southeast Upper Salt Creek requirements that preserve minimum flood corridor widths up to the 150 acres. The green space is devoted to those requirements. Previous to those new watershed requirements, most of this green space would have been able to have been developed with more lots and the lots could have been bigger. Thus, there is a cost and consequence in terms of what happens in development as a result of other choices that we make, and this development is a clear indication of that. This is a good illustration of what happens when costs are increased and more standards are put in place.

In addition, Katt pointed out that the 324 homeowners that will move into this subdivision will be obligated through their association to maintain this green space in perpetuity. That is another consequence and another choice.

### Opposition

**1. Keith Spilker**, 900 Fletcher Avenue, challenged that the developer knew about the green spaces when he purchased this property. The developer also had a choice whether to purchase the property at \$47,000/acre.

Spilker is opposed to the project as a whole because of lack of infrastructure. It would be a novel idea if this Planning Commission would actually do some planning and get some infrastructure in place before these developments come about. We have Fallbrook to the west, Stone Bridge Creek to the east and the recently approved Links development, and yet the infrastructure for traffic is not there. He suggested that this development at least be delayed for 3-5 years to allow that infrastructure to be put in place.

Spilker urged that the additional street recommended by the staff is not needed. That street would result in loss of green space and trees.

Spilker is opposed to the smaller lot sizes. It comes down to more of a difference in vision between the neighbors and the developer. This is an area surrounded by acreages and acreage development. The minimum lot size waiver is needed for 90 of the lots. The neighbors believe the developer should be required to maintain the 50' width, 6000 sq. ft. lots. Spilker believes the developer can do affordable housing on a slightly larger lot, which will increase values and improve the neighborhood.

Spilker is hopeful that the drainage issues can be worked out so that future development towards the west would not have to be redone or add to the drainage. It is already there naturally through the green spaces.

Spilker is requesting that there be some sort of left turn lane on Pennsylvania Avenue so people coming from the east could make a left hand turn into his property.

**2. James Zimmer**, 6320 N. 7<sup>th</sup>, testified in opposition with concerns about the pollution to the wells that could be generated from the new lots. His property is sort of surrounded by this development and he depends on a well. He is concerned about the confusion that already exists between County and City as to who is going to respond to emergencies. The attitude at the meeting with the developer was that "I should have known that the city was going to grow into this area and should have been prepared for these issues". He is also concerned about traffic. If we already have these traffic problems in other places, why would we want to create another traffic problem? How are all of these people going to get out? 14<sup>th</sup> is going to be closed for 22 months. The 7<sup>th</sup> Street bridge is going to be abandoned. Apartments are being developed at 1<sup>st</sup> & Fletcher. Why would we do this without the infrastructure in place?

Zimmer is also opposed to the smaller lot sizes. There is no reason to drag down his property values because of Mr. Hartman's business decision. Hartman told the neighbors at the meeting that they should "get over it". That is the wrong attitude. If the city would give him city water, Zimmer would not be opposed, but the city does not have the money and is not going to bring the water to his property. Zimmer also believes that this subdivision should be delayed until the infrastructure is in place. The traffic is a huge issue. There is nothing between 1<sup>st</sup> and 14<sup>th</sup>, and 14<sup>th</sup> Street will be closed for 22 months.

**3. Charlie Vogel**, 921 Fletcher, testified in opposition. He has lived in his very nice, unique home in a very good neighborhood since 1976. The infrastructure is the most important thing. There are four developments all the way around his property. The 7<sup>th</sup> Street bridge is going to be closed, so that takes one access, bringing 7<sup>th</sup> Street down to Fletcher. 14<sup>th</sup> Street will be taken out in 2006-2008 and they are going to be shut off from going that direction. Then at 1<sup>st</sup> & Fletcher with The Links, they are going to close off that road. Which way are we going

to go? We have to go to 14<sup>th</sup>, back north to Arbor Road, then back to 27<sup>th</sup>, and wherever we can get back on the interstate to head west or south. The neighbors have had two meetings and everyone has objected. They are going to put a water main down Fletcher Street, so that will close half of that road. There are a lot of problems coming out to this area and he believes the Planning Commission should consider delaying this project. There is no reason to have anything smaller than a 50' lot. The Commissioners need to drive down Fletcher between 1<sup>st</sup> and 14<sup>th</sup> before making a decision.

**4. Bruce Spilker**, 280 Pennsylvania Avenue, agreed with previous testimony regarding the infrastructure, lot sizes and water. If this developer could bring in a nice development and put the infrastructure in place like Abel did with Fallbrook, it would be more acceptable. He does not understand the rush. By putting in more green space, they are needing the smaller lots. Spilker suggested that there are already problems with green space in Bicentennial as far as maintenance. If you bring in smaller lots, you bring in smaller incomes who cannot pay their homeowner association dues. The neighbors know the property is going to be developed, but they are requesting that the time be taken to put the infrastructure in place first.

**5. Melinda Kramer**, 6300 N. 7<sup>th</sup>, is opposed to this development because of the traffic problems. You are going to have people coming out of this development onto a dirt road having to go through the county roads back into city roads. There will be construction traffic in front of her house on a dirt road. The infrastructure is a concern. Have there been any studies done on the maximum density? Will there be enough fire service available with acceptable response time? These people are going to be paying taxes for services that might not even be available. They are going to have tiny houses right next to each other with 5' setbacks. The schools are already overcrowded. There are other homeowners in the area that are opposed. There needs to be some kind of buffer zone.

**6. Larry Ogden**, 1300 Fletcher, agreed with the previous testimony in opposition. He is the closest acreage. The first lot will be 50' from his. Most of the people in the area have purchased their homes within the last 15 years as acreages. They did not want neighbors that close. His is an acreage development on AG land. The main concern is the small lot sizes. There will be congestion with people parking on the streets. This is an agricultural area consisting of acreages.

#### Staff questions

Pearson inquired as to the typical lot dimensions in R-3 zoning. Horner advised that the R-3 zoning is 6,000 sq. ft. lot size with 50' minimum width. There is a minimum depth of 90' in the subdivision ordinance.

Carlson asked staff to address the discussion in the staff report about changing the street layout for pedestrian function. Horner responded, stating that the applicant showed the

Planning Commission a layout that added the street south of the proposed Bobby Lane. The addition of this street (which the applicant is proposing to eliminate), will shorten the block length and provide better pedestrian orientation to facilitate pedestrian movement when the adjacent property develops. The staff report indicates that the Comprehensive Plan specifically calls for shorter block lengths. The recommendation to deny the extended block length and pedestrian easement comes directly from the Comprehensive Plan.

Horner also advised that the children would go to Fredstrom School. She believes that LPS plans to build a school in Fallbrook. LPS did receive this application and did not oppose it.

Carlson is worried about pedestrian motions through the development.

Carroll inquired about the proposed amendments. With the exception of the block length waiver and pedestrian easement waiver, staff agrees with the motions to amend. This proposal is approximately three dwelling units per acre, and the R-3 density for a community unit plan is 6.96 dwelling units per acre. There is quite a bit of the area that could be developed that is being utilized as open and green space.

Bills-Strand inquired whether there is any other place in the community with this kind of density abutting other acreages. Horner suggested that the density is quite low and the community unit plan is intended for situations like this where you would do a cluster development. The overall density is consistent with the typical residential subdivision in Lincoln. Hartland Homes has several developments across Lincoln with 42' wide lots, e.g. Cardinal Heights. Thirty percent of this development is the smaller lots. The majority of the lots are larger than the 42' wide lot.

#### Response by the Applicant

Katt reminded the Commission that this property is shown in the Comprehensive Plan as being converted over time into an urban area in the City of Lincoln; it is one of our natural sewer basins; the infrastructure is there; at the boundaries of this property, the infrastructure is in place, and in order for this development to proceed, all of the city infrastructure will be built and paid for by the applicant. This proposal will be developed in phases. This will be Hartland Homes' newest development in Lincoln. In terms of phasing, it will start in the corner where the sewer connection is; the water line is being extended as part of Stone Bridge Creek. This development will have two accesses to N. 14<sup>th</sup> Street before going to the next phase, and the very last phase will be that which will connect to 7<sup>th</sup> Street. Through the phasing of this project, the neighbors will have the timing that they are requesting and the infrastructure will be extended in a logical fashion.

With regard to the proximity to acreages, Katt pointed out that the Comprehensive Plan does not contemplate that acreages will remain in this area. It contemplates that these acreages will be converted over time to urban density lots—it is a much more efficient land use. This is

a low density development, under four dwelling units per acre. The current Comprehensive Plan strategies talk more about 5-6 dwelling units per acre. While the lots are small, the overall density of the development is below where the Comprehensive Plan targets the goal.

With regard to delay, Katt advised that Hartland Homes bought this property because his project on N. 56<sup>th</sup> has been on hold for 6-7 years. He is out of land. He does not have a place to build homes. If you delay this approval, you put Hartland Homes out of business.

**ANNEXATION NO. 05006.**

**ACTION BY PLANNING COMMISSION:**

April 27, 2005

Marvin moved approval, seconded by Krieser.

In a nutshell, Marvin believes this represents the conflicts we are going to have with acreage owners. You have to balance the infrastructure with the fact that the city is growing and we have to add lots. He believes it is a issue of balancing. You are not ever going to get a perfect situation where a five lane road is out there and all the amenities you expect are in place. There is not going to be a place where it does not conflict with acreages. He believes this proposal balances that as well as it can.

Motion for approval carried 8-1: Carroll, Pearson, Marvin, Krieser, Sunderman, Taylor, Larson and Bills-Strand voting 'yes'; Carlson voting 'no'. This is a recommendation to the City Council.

**CHANGE OF ZONE NO. 05024**

**ACTION BY PLANNING COMMISSION:**

April 27, 2005

Carroll moved approval, seconded by Krieser and carried 8-1: Carroll, Pearson, Marvin, Krieser, Sunderman, Taylor, Larson and Bills-Strand voting 'yes'; Carlson voting 'no'. This is a recommendation to the City Council.

**SPECIAL PERMIT NO. 05015**

**ACTION BY PLANNING COMMISSION:**

April 27, 2005

Carroll moved to approve the staff recommendation of conditional approval, with the amendments requested by the applicant, except for the block length waiver on Block 15, seconded by Marvin.

Pearson made a motion to amend to deny the waivers of average lot width and lot area. Motion died for lack of a second.

Motion for conditional approval, with amendments, carried 7-2: Carroll, Marvin, Krieser, Sunderman, Taylor, Larson and Bills-Strand voting 'yes'; Pearson and Carlson voting 'no'.

This is final action, unless appealed to the City Council within 14 days.

**STREET & ALLEY VACATION NO. 05002**

**ACTION BY PLANNING COMMISSION:**

April 27, 2005

Carroll moved a finding of conformance with the Comprehensive Plan, seconded by Larson and carried 9-0: Carroll, Pearson, Marvin, Krieser, Sunderman, Carlson, Taylor, Larson and Bills-Strand voting 'yes'. This is a recommendation to the City Council.

\*\*\* break \*\*\*

Chair Bills-Strand then announced the request for the Commission to rescind their previous action of denial on the Prairie Village North Planned Unit Development and associated requests at 84<sup>th</sup> & Adams Street.

Larson made a motion to rescind the Planning Commission recommendation of denial on **COMPREHENSIVE PLAN AMENDMENT NO. 05012**, seconded by Sunderman.

Ex Parte Communications:

Marvin disclosed that he visited with Peter Katt, who represented that the applicant is most interested in the residential portion of the PUD; the fact that the Planning Commission recommended denial does not give any direction to the City Council. The applicant would like a rehearing and direction from the Planning Commission, such as downsizing the commercial component, etc.

Carlson disclosed that he had calls from four or five of the neighbors that were confused as to why we were entertaining a motion to change our minds. He suggested that they e-mail the Planning Department so that everyone has the same information.

Bills-Strand disclosed that she did receive some phone calls but she was out of town.

Krieser disclosed that he had some telephone calls.

Taylor disclosed a call from Channel 10/11 and Steve Champoux, who urged that the emphasis really is not the commercial but the residential; however, he stated that Wal-Mart is a very important component to their planning. He also was told that the other alternative is to look at the southeast corner, which is closer to the school.

Pearson does not believe there are any ex parte communications since there is no motion that has been advertised. She does not believe ex parte is essential to this action. She has talked to a great number of people, including the newspaper and television station. A great number of people think part of this is a ruse. The site on the



southeast corner is not big enough for a Wal-Mart. The reasons why they want this rescinded have nothing to do with where Wal-Mart is going to be located. They just don't want a denial to go to the City Council. She had ex parte with legal counsel for the city. She believes this is a dangerous precedent. She does not believe the Planning Commission should rescind action that has already been taken.

Discussion on the Motion to rescind: Larson stated that he has all kinds of mixed emotions on this question and wants everyone to know that he wishes Wal-Mart would go away because he does not believe they add much to our community. He voted against this proposal on the northeast corner of 84<sup>th</sup> & Adams at the last meeting thinking that that might take care of it, but he understands that Wal-Mart now may come back with an application for the southeast corner. While the northeast corner would not be great, the southeast corner would be disastrous because it would put it so close to the school and church. He is making the motion to rescind in the hopes of choosing the lesser of two evils and put Wal-Mart on the northeast corner.

Larson went on to state that in reality, he does not think the Planning Commission votes should reflect the desire to have a certain company here or there. It should be based on good planning. Whether or not we like Wal-Mart should not have anything to do with it. That is why he made the motion to rescind.

Carlson commented that technically, we may not have an ex parte situation, but he cannot imagine how this does not involve the spirit of ex parte. We had public hearing, motions were made, actions were taken, and now we have a request for reconsideration based on what? Why would we think about changing our mind? What is the new information? What has been told? The motion that is in front of us is dangerous and ugly. This is a bottomless pit that will lead us to make a decision and then have conversations off the record outside the public hearing and come back and make a motion to rescind. This is very bad public process and evades public trust. Just to be clear, this is not about one site or another site. Our motion was to deny the application; that application was on the northeast corner; that motion was to deny and that motion carried – that's it.

Bills-Strand asked staff whether there was information given at the hearing that was inaccurate or misleading that needs to be corrected? Marvin Krout, Director of Planning, does not believe so.

Taylor stated that in his ex parte communications, there were some words that could tend to breed fear that the Wal-Mart would move from the north to the south. He does not believe the commission should be motivated in this way. The Commission voted on the information before them. He does not see any reason to recant that decision.

Carroll commented that he was on the losing side of the vote, but he thinks it was in the public forum where it needed to be. Everything was discussed. The information he had helped make the decision. He does not think it needs to be voted upon again.

Bills-Strand agreed. She was also on the losing side of the vote. If there was misinformation that we were given that needed to be corrected, she would be more open to rehearing it.

Motion to rescind failed 2-7: Larson and Krieser voting 'yes'; Carroll, Pearson, Marvin, Sunderman, Carlson, Taylor and Bills-Strand voting no.

The Clerk then called into the record the associated **ANNEXATION NO. 05005**. There was no motion.

The Clerk then called into the record the associated **CHANGE OF ZONE NO. 05020, PRAIRIE VILLAGE NORTH PLANNED UNIT DEVELOPMENT**. There was no motion.

There being no further business, the meeting was adjourned at 3:50 p.m.

Please note: These minutes will not be formally approved until the next regular meeting of the Planning Commission on May 11, 2005.